

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Duncan J. McNeil, III

v.

Civil No. 05-cv-224-SM

United States, et al.

REPORT AND RECOMMENDATION

Proceeding *pro se* and *in forma pauperis* plaintiff Duncan J. McNeil, an inmate at the Spokane Washington County Jail, has filed a verified complaint and amendment thereto against the United States of America and its officers and agencies, including the district and bankruptcy courts for the District of New Hampshire, the United States Attorney, the Office of the United States Trustee, the United States Marshal's Service, the Federal Bureau of Investigation, the Internal Revenue Service and the Secret Service (document nos. 1 and 7).

The complaint is before me for preliminary review to determine whether, among other things, it states a claim upon which relief may be granted. See 28 U.S.C. § 1915A; U.S. District Court for the District of New Hampshire Local Rule ("LR") 4.3(d)(2). For the reasons stated below, I recommend that

the complaint be dismissed.

A district court may dismiss an *in forma pauperis* complaint *sua sponte* if the complaint is frivolous or malicious or fails to state a claim on which relief may be granted. See 28 U.S.C. § 1915(e)(2)(B)(I)-(ii). See also Clorox Co. Puerto Rico v. Proctor & Gamble, 228 F.3d 24, 30-31 (1st Cir. 2000); Street v. Fair, 918 F.2d 269, 273 (1st Cir. 1990).

In this action Duncan seeks enforcement of a foreign judgment entered by the United States District Court for the Eastern District of Washington. He also appears to raise constitutional claims concerning the conditions of his confinement and his allegedly illegal detention in the State of Washington. Although he names defendants that are located within the District of New Hampshire, none of the allegations pertain to those defendants. Instead the allegations appear to relate to defendants located within the Eastern District of Washington, where McNeil has been deemed a vexatious litigant and is a party to at least 40 civil actions.

McNeil also has been deemed a vexatious litigant in the United States Bankruptcy Court for the Central District of California and the Spokane County Superior Court. See McNeil v.

Brandt, No. C05-1043-RSL (W.D. Wash. June 14, 2005). Since his incarceration in the State of Washington, he has proceeded *in forma pauperis* in at least five prior civil actions, all of which have been dismissed as frivolous or malicious. See McNeil v. Spokane County Jail, No. 04-371-AAM (E.D. Wash. Nov. 9 2004); McNeil v. Gregoire, No. 03-372-AAM (E.D. Wash. Nov. 9, 2004); McNeil v. Miller, No. 04-378-AAM (E.D. Wash. Nov. 9, 2004); McNeil v. Tighe, No. 04-379-AAM (E.D. Wash. Nov. 9, 2004); McNeil v. Williams, No. 04-380-AAM (E.D. Wash. Nov. 9, 2004). In a sixth action, involving claims and defendants identical to those here, the court denied McNeil's motion to proceed *in forma pauperis* based on his history of vexatious litigation. See McNeil v. United States, et al., No.3-05-cv-1284-B, 2005 WL 1521485 (N.D. Tex. June 28, 2005). For the reasons stated above, I recommend that the complaint be dismissed as frivolous.

If this recommendation is approved, the claims as identified in this report and recommendation, will be considered for all purposes to be the claims raised in the complaint. If the plaintiff disagrees with the identification of the claims herein, plaintiff must do so by filing an objection within ten (10) days of receipt of this report and recommendation, or by properly

moving to amend the complaint.

Any further objections to this report and recommendation must be filed within ten (10) days of receipt of this notice. Failure to file objections within the specified time waives the right to appeal the district court's order. See 28 U.S.C. § 636(b)(1); Unauthorized Practice of Law Committee v. Gordon, 979 F.2d 11, 13-14 (1st Cir. 1992); United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986).

James R. Muirhead
United States Magistrate Judge

Date: August 5, 2005

cc: Duncan J. McNeil, *III*, *pro se*